



ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

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Department of Justice
Washington, D.C. 20530

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Anthony A. Lapham, Esq.
General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Lapham:

Early next year, the Administration will submit to Congress legislation of vital interest to the Department of Justice and to your Department as well. The purpose of this legislation is to make the United States exclusively liable for all constitutional torts and all common law torts for which the government can be sued under present law. In other words, the bill would amend the Federal Tort Claims Act to require that such suits be brought against the government rather than against individual government employees. The legislation would also add a new Chapter 78 to Title V, United States Code, which would authorize the victims of torts arising under the Constitution of the United States to initiate and participate in an agency disciplinary proceeding against the offending employee.

The Federal Tort Claims Act now makes the government liable "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred" 28 U.S.C. 1346(b). However, except with respect to "drivers actions" and certain other torts, the existing Tort Claims Act does not prevent the plaintiff from also bringing suit against the individual employee or from bringing suit against the employee and not the United States. See, Butz v. Economou, ____ U.S. ____, 57 L Ed. 2d 895, 46 LW 4952 (1978).

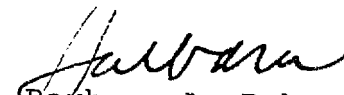
Extending the coverage of the Federal Tort Claims Act to include constitutional torts and making the United States the exclusive defendant under the Act will have three consequences. First, federal employees will be immunized from the

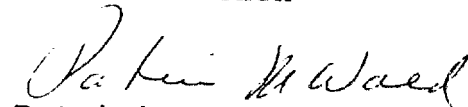
threat of crippling lawsuits challenging their actions while in government service. Second, it would no longer be necessary for the government to retain private attorneys to defend employees who are defendants in lawsuits. With the employee no longer a party in interest, many meritorious claims can be settled short of litigation by the government. Third, plaintiffs will not only find it easier to recover on meritorious claims, but will find the Act extended to certain claims not now covered.

The Administration submitted similar legislation last year and subcommittee hearings were held on both the House and Senate versions of the bill, S. 2117 and H.R. 9219. In neither chamber, however, was the legislation heard at the full Judiciary Committee. One of the problems facing this proposal was that it was sometimes perceived as a bill of interest only to the Justice Department. This, of course, is not so. While Justice has a particular interest in lawsuits against government employees, we know this is a problem for you and the other Departments as well.

We would very much appreciate the opportunity personally to discuss this with you further. We shall be contacting your office soon to set up an appointment at a convenient time.

Sincerely,


Barbara A. Babcock
Assistant Attorney General
Civil Division


Patricia M. Wald
Assistant Attorney General
Office of Legislative Affairs